



2005 SENATE BILL 631

February 27, 2006 - Introduced by Senator REYNOLDS, cosponsored by Representatives MUSSER, ALBERS and KRAWCZYK. Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

1 **AN ACT to amend** 815.20 (1) and (2), 815.21 (2) and 815.21 (4) and (5); and **to**
2 **create** 73.03 (61) and 815.203 of the statutes; **relating to:** the value of the
3 homestead exemption.

Analysis by the Legislative Reference Bureau

Under current law, a Wisconsin resident may claim \$40,000 of equity in a home he or she occupies (homestead exemption) as exempt from execution, from the lien of every judgment, and from liability for the resident's debts, except mortgages, taxes, and certain other debts. This bill provides that if the claimant submits an affidavit with his or her bankruptcy petition verifying that he or she is filing for bankruptcy because of the amount of unsecured debt for medical care, the homestead exemption is equal to the average fair market value of a Wisconsin home, as determined annually by the Department of Revenue.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 73.03 (61) of the statutes is created to read:
5 73.03 (61) To determine annually the average fair market value of a homestead
6 in this state for the purpose of s. 815.203 (2).

SENATE BILL 631**SECTION 2**

1 **SECTION 2.** 815.20 (1) and (2) of the statutes are amended to read:

2 815.20 (1) An exempt homestead as defined in s. 990.01 (14) selected by a
3 resident owner and occupied by him or her shall be exempt from execution, from the
4 lien of every judgment and from liability for the debts of the owner to the amount of
5 \$40,000 under s. 815.203, except mortgages, laborers', mechanics' and purchase
6 money liens and taxes and except as otherwise provided. The exemption shall not
7 be impaired by temporary removal with the intention to reoccupy the premises as a
8 homestead nor by the sale of the homestead, but shall extend to the proceeds derived
9 from the sale to an amount not exceeding \$40,000 the amount under s. 815.203, while
10 held, with the intention to procure another homestead with the proceeds, for 2 years.
11 The exemption extends to land owned by husband and wife jointly or in common or
12 as marital property, and when they reside in the same household may be claimed by
13 either or may be divided in any proportion between them, but the exemption may not
14 exceed \$40,000 the amount under s. 815.203 for the household. If the husband and
15 wife fail to agree on the division of exemption, the exemption shall be divided
16 between them by the court in which the first judgment was taken. The exemption
17 extends to the interest therein of tenants in common, having a homestead thereon
18 with the consent of the cotenants, and to any estate less than a fee.

19 (2) Any owner of an exempt homestead against whom a judgment has been
20 rendered and entered in the judgment and lien docket, and any heir, devisee or
21 grantee of the owner, or any mortgagee of the homestead, may proceed under s.
22 806.04 for declaratory relief if the homestead is less than \$40,000 the amount under
23 s. 815.203 in value and the owner of the judgment shall fail, for 10 days after demand,
24 to execute a recordable release of the homestead from the judgment owner's
25 judgment lien.

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1 **SECTION 3.** 815.203 of the statutes is created to read:

2 **815.203 Value of homestead exemption. (1)** Except as provided in sub. (2),
3 the value of the homestead exemption in this chapter is \$40,000.

4 **(2)** For a person who submits an affidavit as part of his or her bankruptcy
5 petition verifying that he or she is filing for bankruptcy because of the amount of his
6 or her unsecured debt for medical care, the amount of the homestead exemption in
7 this chapter is equal to the average fair market value of a homestead in this state,
8 as determined by the department of revenue under s. 73.03 (61).

9 **SECTION 4.** 815.21 (2) of the statutes is amended to read:

10 815.21 **(2)** If such plaintiff is dissatisfied with the quantity selected or the
11 estimate of the value thereof, the officer shall cause such lands to be surveyed,
12 beginning at a point to be designated by the owner and set off in compact form. After
13 the lands are surveyed and set off, if in the opinion of the plaintiff, the same shall be
14 of greater value than \$40,000 the amount under s. 815.203, the officer may still
15 advertise and sell the premises so set off, and out of the proceeds of such sale pay to
16 the exempt homestead claimant the ~~sum of \$40,000~~ amount under s. 815.203 and
17 apply the balance of the proceeds of such sale on the execution; but no sale shall be
18 made in the case last mentioned unless a greater sum than \$40,000 the amount
19 under s. 815.203 is paid for said premises. The expenses of such survey and sale shall
20 be collected on the execution if the owner claimed as the owner's homestead a greater
21 quantity of land or land of greater value than the owner was entitled to; otherwise
22 such expenses shall be borne by the plaintiff.

23 **SECTION 5.** 815.21 (4) and (5) of the statutes are amended to read:

24 815.21 **(4)** A homestead so selected and set apart by such officer shall be the
25 exempt homestead of such person. The costs of such notice and survey shall be

SENATE BILL 631**SECTION 5**

1 collected upon the execution. A failure of the officer to set apart such homestead shall
2 affect such levy, only as to such homestead; and the failure of such person to select
3 that person's homestead shall not impair that person's right thereto, but only that
4 person's right to select the same when such selection is lawfully made by such officer.
5 After such homestead is thus set off by such officer, if, in the officer's opinion or in
6 the opinion of the plaintiff, the premises are of greater value than \$40,000 the
7 amount under s. 815.203 the officer may sell the same as where the owner makes the
8 selection.

9 (5) If the land claimed as an exempt homestead exceeds in value \$40,000 the
10 amount under s. 815.203, the officer shall not be bound to set off any portion thereof
11 but may sell the same, unless the debtor shall make the debtor's selection of such a
12 portion thereof as shall not exceed \$40,000 the amount under s. 815.203 in value.

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(END)